

# PELICAN BAY FOUNDATION, INC.

v.

## COLLIER COUNTY WATER AND SEWER DISTRICT & SFWMD

### DOAH CASE NO. 08-1063



[sfwmd.gov](http://sfwmd.gov)

# OUTLINE OF PRESENTATION

- Procedural History
- Administrative Law Judge's (ALJ) Key Rulings
- Governing Board's Role
- Counsel's Role
- Alternatives Available to Governing Board
- Today's Process
  - Exceptions, Responses and Recommended Order
- Counsel's Recommendation

# **PARTIES**

- **Pelican Bay Foundation, Inc. – Petitioner**

Master homeowners association for Pelican Bay, a Collier County subdivision, representing interests of 13,000 members

- **Collier County Water and Sewer District (“Collier County”) – Respondent**

- **South Florida Water Management District (“SFWMD”) - Respondent**

## PROCEDURAL HISTORY

- January 8, 2008 SFWMD issued a renewal of Water Use Permit No. 11-00052-W to Collier County Water and Sewer District
- January 10, 2008 Petitioner filed Petition for Administrative Hearing
- January 18, 2008 SFWMD issued Order Dismissing Petition with Leave to Amend
- February 9, 2008 Petitioner filed Amended Petition
- February 27, 2008 Collier County filed Motion to Dismiss Complaint

## PROCEDURAL HISTORY

- February 27, 2008 SFWMD issued Order transmitting Amended Petition and Motion to Dismiss to DOAH for assignment of an ALJ
- March 14, 2008 ALJ held telephonic hearing on Motions to Dismiss
- March 20, 2008 Recommended Order Dismissal
- April 3, 2008 Petitioner filed exceptions
- April 14, 2008 SFWMD and Collier County filed separate Responses to Exceptions

# ALJ'S KEY RULINGS

## ■ Standing

- Petitioner's alleged injury-in-fact not "of sufficient immediacy"
- Petitioner's alleged injury-in-fact not "of the type and nature intended to be protected" by Chapter 373 and Title 40E, in particular s. 373.250(2)(c)

## 373.250(2)(c), F. S.

"A water management district may require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is environmentally, economically, and technically feasible and of such quality and reliability as is necessary to the user. However, this paragraph does not authorize a water management district to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time. "

(emphasis added)

# GOVERNING BOARD'S ROLE

- Hear & consider oral argument of counsel for parties
- Consider timely filed exceptions to Recommended Order & responses to exceptions
- Enter final order, including ruling on exceptions
  - decision based only on the record in the case



## COUNSEL'S ROLE

- Assist Governing Board in deliberations
- Advise Governing Board regarding any legal error that might cause Final Order to be overturned on appeal
- Separated from District staff's position by same *ex parte* restrictions to which Governing Board is subject
- Submit to Governing Board a Confidential Memorandum with recommendation of rulings on exceptions and final action to be taken on ALJ's Recommended Order

# ALTERNATIVES AVAILABLE TO THE GOVERNING BOARD

- Adopt the Recommended Order *in toto*; or
- Reject or modify
  - Conclusions of law and/or interpretations of administrative rules in the Recommended Order, if Governing Board determines that its conclusions or interpretations (within the District's substantive jurisdiction) are as or more reasonable than the ALJ's
  - Findings of fact only if not based upon competent substantial evidence

# TODAY'S PROCESS

## Exceptions, Responses & Recommended Order

- Governing Board will hear oral argument from Parties:
  - Petitioner's counsel will have a total of 10 minutes
  - Respondents' counsel will have a total of 10 minutes
- Governing Board may ask questions after each party concludes its oral argument
- After oral argument & questions, it is appropriate for Governing Board to discuss the issue among themselves & with Counsel

# Pause Presentation

***Parties will make their presentations  
on Exceptions***



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# COUNSEL'S RECOMMENDATION

## ■ Reject Petitioner's Exceptions

### ■ Exception 1

- Facts alleged in Amended Petition taken as true

### ■ Exception 2

- Facts alleged in Amended Petition taken as true
- No basis for alternative conclusion that is "as or more reasonable"

### ■ Exception 3

- No basis for alternative conclusion that is "as or more reasonable"

## COUNSEL'S RECOMMENDATION (cont.)

- Adopt ALJ's Recommended Order Dismissal *in toto*
  - Dismiss Petitioner's Amended Petition with prejudice
- Issue renewal of Permit No. 11-00052-W as previously approved on January 8, 2008.